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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,705	09/27/2005	Scott E. Manzo	2841 (203-2730PCTUS)	3095
50855	7590	10/01/2008		
Tyco Healthcare Group LP 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473			EXAMINER DANG, PHONG SON H	
			ART UNIT 4166	PAPER NUMBER
			MAIL DATE 10/01/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/550,705	Applicant(s) MANZO, SCOTT E.	
	Examiner SON DANG	Art Unit 4166	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-12 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 13-15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. The Amendment filed August 28, 2008 has been entered. Claims 1-20 remain pending in the application. The previous Objection of the drawings are withdrawn in light of Applicant's amendment to drawings.

Election/Restrictions

2. Applicant's affirmation of the provisional election of the species I, Figs. 1A-1B & 2A-2F, claims 1-9, 13-15, and 17-20 in the reply filed on 28 August 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-9, 13-15, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,387,235 to Chuter (Chuter).

In Reference to claim 1:

Chuter teaches:

A device for joining a first body vessel to a second body vessel, comprising: a) a cartridge (352, Fig. 43) (Col. 23, lines 42-43) having a distal end and defining a longitudinal

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axis; b) a radially expandable anchor (301/201, Fig. 43/Fig. 38, Col. 16, lines 59-60) disposed at the distal end of the cartridge for engaging the first body vessel (250, Fig. 43), the expandable anchor having an initial condition and an expanded condition wherein the expandable anchor is radially larger than the expandable anchor (301/ 201) in the initial condition (inherent property because disclosed as self-expanding - Col. 16, lines 59-60); and c) a plurality of sutures (357, 358, Fig. 43, Col. 23, lines 56-58) disposed within the cartridge (352) and being deployable therefrom so as to engage the second body vessel, the sutures (357, 358) being threaded through the expandable anchor (301, Fig. 43); and d) a plurality of needle anchors (205, Fig. 43), wherein a needle anchor (205, Fig. 43) is attached to a distal end of a respective suture (357, 358, Fig. 43).

In reference to claims 2 & 14:

The device as claimed in claims 1 & 13 (see Rejection of Claims 1 & 13 above), wherein the expandable anchor (301/ 201, Fig. 43/Fig. 21) comprises a plurality of flexible arms (203, Fig. 21, Col. 16, line 63) biased in an expanded position.

In reference to claims 3 & 15:

The device as claimed in claims 1 & 14 (see Rejection of Claims 1 & 14 above), wherein the cartridge comprises an inner member 354 and an outer member (352, Fig. 43) having a lumen dimensioned to receive the inner member, the sutures (357, 358) being disposed in channels formed in the inner member.

In reference to claims 4 & 17:

The device as claimed in claims 1 & 13 (see Rejection of Claims 1 & 13 above), wherein the anchor (301) has a central passage and the sutures (357, 358, Fig. 43) extend

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through the expandable anchor (301) and proximally through the central passage (Col. 23, lines 61,62).

In reference to claim 5:

The device as claimed in claim 3 (see Rejection of Claim 3 above), wherein the expandable anchor (301) is disposed between the inner member (354) and the outer member (217, Fig. 43).

In Reference to Claim 6:

Chuter teaches:

The device of claim 1 (see rejection of claim 1 above), wherein the anchors (205, Fig. 43) are deployable from the cartridge (352, Fig. 43) (anchors 205 are deployable from within the cartridge 352).

In Reference to Claim 7-9, 17 and 19-20, see the reasons stated in paragraph 6 on page 7 of the previous office action.

In Reference to Claim 13:

Chuter teaches:

Claim 13 is substantially identical to Claim 1 (see Rejection of Claim 1 above), a) a cartridge (352, Fig. 43) (Col. 23, lines 42-43) having a distal end and defining a longitudinal axis; b) an anchor (301/201, Fig. 43/Fig. 38, Col. 16, lines 59-60) disposed at the distal end of the cartridge for engaging the first body vessel, c) a plurality of sutures (357, 358, Fig. 43, Col. 23, lines 56-58) disposed within the cartridge (352) and being deployable therefrom so as to engage the second body vessel, the sutures (357, 358) being threaded through the anchor (301,

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Fig. 43); and d) a plurality of needle anchors (205, Fig. 43), wherein a needle anchor (205, Fig. 43) is attached to a distal end of a respective suture (357, 358, Fig. 43).

In Reference to Claim 18:

Chuter teaches:

The device of Claim 13 (see rejection of Claim 13 above), wherein the anchors (205, Fig. 43) are deployable from the cartridge (352, Fig. 43) (anchors 205 are deployable from within the cartridge 352).

Response to Arguments

5. Applicant's amendments have clear the Objection to the drawings from previous Office Action.

6. Applicant's arguments filed August 28, 2008 have been fully considered but they are not persuasive. Applicant argues that the anchor and the spring are formed as one unit. The examiner acknowledges that the barb anchor and the spring are formed as one unit. However, the spring itself without the barb anchor would still operated as a spring. The barb anchor integrated with the spring does not make the spring functions any different. The barbs anchor itself without the spring would still operated as a barb. Applicant argues that the device is for joining two separate body vessels. Chuter also taught that his device is for joining the Aorta Artery and the Iliac Artery if the aneurysm happened to ruptured. The "barbs" of Chuter are "a plurality of needle anchors" which are "attached to a distal end of a respective suture" (see Chuter Fig. 43, No. 205, 357, 358). Applicant's amendment language fails to distinguish their claimed invention from Chuter. The examiner acknowledges that the device of Chuter did not

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teach to approximate two separate body vessels. However, the distinguishing language must be recited in the claims to overcome the applied prior art.

Applicant's amendments to claims 1, 6, 13 and 18 still meet with each and every elements over the prior art, Chuter US Patent No. 5,387,235 remains anticipatory to the claimed invention as indicated in the above paragraphs

CONCLUSION

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809. The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ken Bomberg can be reached on 571-272-4922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SD

/Kenneth Bomberg/

Supervisory Patent Examiner, Art Unit 4166